

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN**

**FRONTIER ENERGY, INC.  
AND  
CITY OF DULUTH**

THIS AGREEMENT, effective January 1, 2025 (the “Effective Date”), by and between the City of Duluth, hereinafter referred to as City, and Energy Insight, Inc., located at 7935 Stone Creek Drive, #140, Chanhassen, MN, 55317, hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested professional services to provide conservation improvement services for Duluth Public Works and Utilities Commercial and Industrial conservation programs to increase capacity (the “Project”); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a Proposal to provide services for the Project (the “Proposal”). A copy of the Proposal is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant’s professional services for the Project;  
NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

**I. Services**

Consultant will provide the following services related to the Project as described in Consultant’s Proposal (the “Services”). Consultant agrees that it will provide its services at the direction of the Director of Public Works and Utilities (“Director”). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

**II. Fees.**

It is agreed between the parties that Consultant’s maximum annual fee for the Project and Services will be Eighty Thousand and no/100ths Dollars (\$80,000.00), and a total amount not to exceed for the three-year contract period of Two Hundred and Forty Thousand and no/100 Dollars (\$240,000.00) inclusive of all travel and other expenses associated with the Project, payable from fund 520-500-1940-2440-5487. All invoices for services rendered shall be submitted monthly to the attention of Director. Payment of expenses is subject the City’s receipt of reasonable substantiation/back-up supporting such expenses.

**III. General Terms and Conditions**

**1. Amendments**

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing and signed by a duly authorized representative of each party.

2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be Matt Haley (the “Primary Consultant”). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant’s obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a “work made for hire” and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work (“City Property”). Consultant further agrees that to the extent the work is not a “work made for hire” Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have

been previously assigned, licensed or otherwise encumbered.

- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
- e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
- g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement. Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Consultant Representation and Warranties

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by December 31, 2027, unless terminated earlier as provided for herein. The agreement may be renewed for two (2) additional one-year terms by mutual written consent of the authorized representatives of the parties. Nothing herein guarantees any such renewal.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be

construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity

To the fullest extent permitted by law, Consultant shall defend, indemnify, and hold City and its employees, officers and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by itself or any third party, including claims arising from the acts, omissions, negligence, or misconduct of Service Provider or that of its agents, employees, or contractors. The obligations shall include, but not be limited to, the obligations to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City are alleged

to be or could be found to arise out of acts or omissions of Service Provider or are passive, derivative, or vicarious of the negligent or intentional acts or omissions of Consultant arise out of or relate to the services in this Agreement or Service Provider's negligent, intentional, or wrongful acts or omissions, including breach of any duty in this agreement, of Consultant. The obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. This Section shall survive the termination of this Agreement for any reason. Consultant shall not have the obligation to indemnify the City for its intentional, willful or wanton acts. **The Consultant understands this provision may affect its rights and may shift liability.**

8. Insurance

- a. Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.
  - a. Workers' compensation insurance in accordance with the laws of the State of Minnesota.
  - b. Commercial General Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provisions may make up the difference between the commercial general and auto liability coverage amounts and the required minimum amount stated above.
  - c. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, Consultant hereby commits to provide at least 60 days' notice prior to any change to the Professional Liability Insurance policy or coverage; and in the event of any change, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this this paragraph which will provide unbroken protection to the City, or in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the

protection to be provided by said “claims made” insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

- d. **City of Duluth shall be named as Additional Insured** under the Commercial General Liability and Automobile Liability. Consultant shall also provide evidence of Statutory Minnesota Workers’ Compensation Insurance. Consultant to provide Certificate of Insurance evidencing such coverage with notice to City of cancellation in accordance with the provisions of the underlying insurance policy included. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Consultant’s interests and liabilities.
- b. Certificates showing Consultant is carrying the above described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- c. The City shall be named as an additional insured on each liability policy other than the professional liability and the workers’ compensation policies of the Consultant.
- d. The certificates shall provide that the policies shall not be cancelled during the lift of this Agreement without advanced notice being given to the City at least equal to that provided for in the underlying policy of insurance.
- e. Except as provided for in Section 8.a.iv above, Consultant hereby commits to provide notice to City at least 30 days in advance of any change in the insurance provided pursuant to this Section 8 or in advance of that provided for in the underlying insurance policy or policies whichever is longer. For the purposes of Section 8 of this Agreement, the term, “changed”, shall include cancellation of a policy of insurance provided hereunder and any modification of such policy which reduces the amount of any coverage provided thereunder below the amounts required to be provided hereunder or otherwise reduces the protections provided under such policy to City

## 9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

**City:** City of Duluth  
411 W First Street  
City Hall Room 240  
Duluth MN 55802  
Attn: Greg Guerrero

**Consultant:** Frontier Energy, Inc.  
7935 Stone Creek Drive  
Suite 140  
Chanhassen MN 55317  
Attn: Matt Haley

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.



This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (".pdf"), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as

physical delivery of the paper document bearing the original signature.

*[Remainder of page intentionally left blank. Signature page to follow.]*

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

**CITY OF DULUTH**

**FRONTIER ENERGY, INC.**

By: \_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Title of Representative

Date: \_\_\_\_\_

## EXHIBIT A

### **Work Scope for Commercial and Industrial Conservation Improvement Program Services**

Duluth Public Works and Utilities conservation programs have evolved as customer needs and State regulations have grown. In 2007 the Minnesota legislature passed the “Next Generation Act” setting energy efficiency and conservation savings goal for utilities throughout Minnesota. The Minnesota Department of Commerce, Division of Energy Resources (DER) is responsible to monitor and evaluate each utility’s Conservation Improvement Programs (CIP) to ensure compliance. They have set an energy conservation program savings goal of one percent of natural gas sales.

Frontier Energy, Inc. (Frontier) provides energy management services to a variety of natural gas and electric utilities, industrial and commercial organizations, schools, and government entities. Frontier is currently hired by Minnesota Power to conduct energy audits for commercial and industrial customers in its service territory. This relationship has given Frontier familiarity with the operations of many customers in Duluth. Frontier was selected by the City of Duluth, Duluth Public Works and Utilities, and Minnesota Power, through a competitive bid process, to conduct 86 audits of facilities for the City of Duluth.

Duluth Public Works and Utilities wants Frontier to provide services to support and enhance its Commercial and Industrial Conservation Programs to maximize the energy savings required by the “Next Generation Act.”

- Perform 50 to 70 on-site energy assessments for commercial and industrial customers and identify and recommend energy efficiency and conservation measures. Analyze and report energy savings potential and financial benefits (simple pay back & life cycle analysis) as directed by the Manager of Customer Service or Customer Service’s Utility Project Coordinator.
- Provide services for current CIP programs as directed by the Manager of Customer Service or Customer Service’s Utility Project Coordinator on an hourly basis not to exceed funds budgeted for these services each year in 2022, 2023, and 2024.
- Provide service for current Commercial and Industrial CIP program including: developing marketing materials, providing customer and staff training, processing rebate incentives, coordinating with the Division of Energy Resources, and other program assistance as directed by the Manager of Customer Service or Customer Service’s Utility Project Coordinator.

- Work closely with Public Works and Utilities representatives and customers directly: being available by telephone, through e-mail correspondence and site visitation for commercial, industrial, and multi-family residential customers regarding questions on energy conservation and efficiency as directed by the Manager of Customer Service or Customer Service's Utility Project Coordinator.
- Process custom and prescriptive rebate applications providing documentation for Public Works and Utilities to process and approve incentives for commercial and industrial customers for implementing energy efficiency measures as directed by the Manager of Customer Service or Customer Service's Utility Project Coordinator.
- Assist with the development, administration and implementation of conservation program segments such as new construction design and rebates or loans as directed by the Manager of Customer Service or Customer Service's Utility Project Coordinator.
- Work with and develop relationships with local contractors, distributors, and trade allies (mechanical, HVAC, architects, engineers, etc.) to promote the commercial and industrial portion of Public Works and Utilities CIP program.
- Maintain a database for tracking savings, incentives, contacts and other information as directed by the Manager of Customer Service or Customer Service's Utility Project Coordinator.
- Perform other CIP work as assigned or as directed by the Manager of Customer Service or Customer Service's Utility Project Coordinator.

Frontier has qualified and experienced staff members with engineering and professional business backgrounds to perform the work listed above. Frontier will be given a budget amount not to be exceeded in carrying out the work assigned to them. Frontier will bill Public Works and Utilities for time spent performing the above services at specified hourly rates for its staff. Frontier will report monthly on the budget and notify Customer Service's Utility Project Coordinator in advance if it determines that funding for work assigned to Frontier is not adequate to complete assigned work.

## Sole Source Justification for Energy Insight, Inc. Commercial and Industrial Energy Efficiency and Conservation Services

The City of Duluth Public Works & Utilities Department offers free Commercial and Industrial natural gas energy efficiency and conservation assessments at the request of commercial and industrial customers. The demand for these energy assessments to qualify measures for the Commercial and Industrial Conservation grants is projected to be from 50 to 70 surveys per year from 60 to 90 leads annually. To complete this volume of work additional Certified Energy Managers or Energy Engineers are needed beyond what Duluth Public Works and Utilities has available on staff.

Frontier Energy provides this service for Minnesota Power's electrical Commercial and Industrial customers in Duluth. Both utilities offer customers this service as part of their Conservation Improvement Programs as mandated by the Minnesota State Department of Commerce. By collaborating to offer this service to mutual customers ComfortSystems and Minnesota Power can reduce their costs for the audits and give customers a more comprehensive energy audit that includes natural gas, electricity, and water utilities. This level of service provided to the utility customer could not be achieved by either utility if separate companies were selected to perform the audits offered by the utilities. Therefore, the City of Duluth Public Works & Utilities Department recommends issuing a sole source contract to Frontier Energy. This will result in working jointly with Minnesota Power to reduce program costs and deliver singular energy audits for natural gas and electricity through a single survey providing the customer with a comprehensive energy use assessment.

The Next Generation Act of the Minnesota State Legislature requires natural gas utilities across the state to save a percentage of their gross sales volumes through their Conservation Improvement Programs. The Minnesota Department of Commerce has set Duluth Public Works and Utilities energy conservation savings goal at one percent of natural gas sales. Having adequate capacity to perform energy assessments through the Commercial and Industrial Conservation program will help Duluth Public Works and Utilities to meet this goal. The costs of this program count toward the State's conservation improvement program-spending requirements of ½ percent of gross sales revenue.

---

Jim Benning

Director, Public Works and Utilities Department